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French Courts.

"For Heaven's sake," an old friend and subscriber writes us, "let up on us in August. It's vacation time; forget tort and contract and prohibition and all legal subjects and tell us something about French courts." And then he adds some very nice and kindly things about the Editor's notes on London.

Just exactly how we can "let up" on all legal subjects and yet discuss any sort of courts is a problem; but to discuss French courts is no easy subject. The Editor-in-Chief vastly preferred visiting Voisin's and Marguery's and Henri's or Foyot's or Le Boeuf a la Mode than visiting Courts when in Paris and when he remembers the Chablis at one and the Clos de Vougeot at another and those divine *crépes* (a sort of sublimated pancake warmed over in a chafing dish with curaçoa) at Foyot's in the Latin quarter of his vanished years he cares very little about remembering the law courts.

And yet French law courts are remarkable things—so absolutely unlike English or American that it is hard to describe them. The Editor's first experience was in Paris in 1882, when he attended a celebrated trial in the Palais de Justice, which, as most of us know is on the Isle of de la Cite and adjoins the Conciergerie of mournful memories. This "palace" is probably, next to Notre Dame, the most interesting building on the island of the city—the original Paris. It was built in the twelfth century, or rather a part of it was, and was called the Palace of Justice because the Sovereign actually resided there and decided cases submitted to him by his subjects. Its great hall witnessed the marriage of Henry V of England with Catherine of France, and also was the place in which certain clerks —*les clercs de la baroche*—were allowed to play "farces and

moralities"— just as the halls of some of the London Inns of Court were used for the presentation of Shakespeare's plays. This hall and the prison or "Conciergerie" is about all that is left of the old palace, for the building itself has suffered from fire more than once. It is a strange conglommeration of buildings, near the Seine, from which it is separated by the "Quai of the Clock." On the south the graceful spire of the Sainte Chapelle which adjoins it, pierces the air. This Sainte Chapelle, built in 1248, is a jewel of architecture within and without, with stained glass windows of exquisite beauty; but my pen would run away with me if I tried to describe it. The palace itself is a very imposing structure—not in any way as grand as the English Courts of Justice. It has in front of it a paved courtyard shut in by a beautiful iron railing and gilded iron gates. The entrance to the central building is through a portico supported by Ionic columns and surmounted by the arms of France. There is a broad, well lit staircase, and half way up stands in a niche a fine statue of "Law," bearing in one hand a sceptre and in the other the Book of Laws. You enter a waiting room which also serves as a library, and then there are the three chambers of the Court of Appeal.

The tribunal is somewhat oblong, sometimes a horeshce form. On the right sits the Assessor, representing the Minister of Justice; on the left the Registrar on duty. In the parquet, or enclosure beneath the tribunal, is the table of the Usher who calls the cases, keeps order and demands "silence" now and then in a loud voice. The "parquet" is shut in by a balustrade known as the bar, on which the advocates lean as they speak. The space furnished with benches reserved for them and where, as with us, plaintiff and defendant sit, is enclosed by a second bar, to keep off the public. There is no witness box in the French courts. The witness stands in the middle of the court and often has the time of his life, as he addresses court and jury and audience and in fact argues as much as he testifies.

In 1882, over the head of the presiding judge was a large painting of Christ on the cross toward which the witness stretched his hand when he took the oath. I asked a French advocate—not knowing to what use the picture was put—

when I had visited several courts with him, in 1882, why the picture of Christ alone was painted and not the crucifixion. He shrugged his shoulders and smiling replied, "Might not the two thieves reflect in some way on the profession?"

One of the handsomest halls in the building is the one known as "La Salle des Pas Perduos,"—the "Hall of the Lost Steps." A great many reasons have been given for this name. One is derived from the "lost steps" of litigants bringing or defending actions; another from the "lost steps" of those who walk the floor impatiently waiting for their cases to be called. But the most plausible reason seems to be that at one time there was a flight of stairs in the hall which was built over and thus lost. That there are innumerable steps in this hall one can well see when he goes there in the morning and watches the crowds of people—the lawyers in black gowns and white bands, but wearing no wigs, and the throngs of suitors and witnesses.

It seems to be a consulting room as well as a public passage, for you see advocates busily engaged in talk with their clients, consulting papers and gesticulating as only the French can gesticulate.

The judges wear gowns and curious hats, which look as if they were made out of papier mache.

To one used to the English and American procedure a French court is a marvel. There seem to be no rules of evidence. The witnesses make speeches, shriek at counsel and jury, and pay very little attention to the demand for "silence." The judges will often rebuke a witness in a very severe manner and the witness talk back at the judge. Sometimes the lookers-on take a hand and evince their approval or disapproval in a very marked way. The jury will sometimes "butt in" with questions and audible comments, and to me—in 1882 a young barrister—it seemed more like bedlam than a court of justice.

The first trial I attended a young lawyer opened and an old one replied to him. He was very unmerciful to him and the way he made fun of him was awful, and the Court itself was convulsed with laughter. As well as my poor knowledge of French allowed me to catch his meaning he spoke of his young friend's acquaintance with and quotations from the classics. "He understands Homer," said he, "better than the law-writers,

and Anacreon far better than the Code," and then shaking a long finger at the mad and red young attorney he said, "Your client may be Aspasia—*mon ami*—take her to Trouville and play Pericles. Fairer than Phryne is she? *Ah! moi foi,* you cannot bare her charms here and convince our reason through our passions." And so he kept on until, in his rapid speech, I lost the thread of his discourse and then I departed.

In the next Court a lank, red-haired gentleman fairly howled. What he was talking about I have not the least idea, nor do I believe the Court had. Half the time he turned his back on the Court and addressed himself to the "intelligent audience," with a vehemence of gesture, a wildness of manner and a flood of speech that was like a torrent. He beat the air, and then the desk, until finally in a perfect whirlwind of—to me—unintelligible French, he took his seat and the mild looking old President of the Court suggested an adjournment.

The Paris of 1882 and 1910, (when I visited that city for a second time), was as different from the Paris of 1919, as one can well imagine. Paris was gay no longer. One never was out of sight of a woman in black or a soldier in khaki or blue-gray. Cripples and wounded men were everywhere in evidence and the "American language" was spoken on every corner and in every café and restaurant. And the courts seemed to have caught something of the prevailing spirit. On the wet, dull-grey morning in March—when I visited the Palace of Justice the Hall of Lost Steps was crowded with avocats and avouets and clients innumerable; but the military uniforms outnumbered the men in black robes and the hall was lacking in its old vivacity and noise. Perhaps the men who walked its floors were thinking as I was thinking of those steps lost forever to France, which once were heard in this old hall, as young lawyers and clients who thronged the place—steps which went gaily and bravely out to the Marne and the Somme and Verdun, and which would never be heard again either in hall or palace, on the roadways or in the quiet country, stayed forever, somewhere "in Flanders' field."

And the courts were quiet and lawyers and witnesses talked in subdued tones. I noticed that the picture of Christ on the

Cross which formerly had hung on the walls of the various courtrooms had disappeared.

"We do not swear witnesses any more upon the crucifix or by holding up the hand to any painting," a French friend with me replied to my query as to the absence of the picture. "Superstition exists no longer in France."

"But pray God religion and honor yet survive," I replied. He shrugged his shoulders and was silent.

To attempt in a brief article like this to give any intelligent description of French legal procedure would be impossible. The Code Napoleon—or Code Civile, as they call it still—is the law of the land. Equity and law are blended. Jury trials are had, as with us, but the judges wield much more power. I did not attend any criminal trial except in one of the examining courts. The accused in France is presumed to be guilty—"and generally is," my friend remarked, but it is hard to see how the most innocent man could escape under the grilling method pursued by the Examining Judge. The unfortunate creature is examined, cross-questioned, bullied, taken back to his cell, and then re-examined and confronted with his former answers—often twisted and strained by the interpretation put upon them by the judge, and though in the end he may have a trial by jury all these answers are used against him. But the system seems to work all right and French juries, like American ones, bring in verdicts to which they are moved by sympathy—often misplaced—and the crowd of weeping female relations of the accused throngs the court, just as they do with us.

The French have one tribunal we well might copy: The Tribunal of Commerce, which has its own code, its own judges and functionaries. The code dates back to 1807. The commercial judges are named for two years by the merchants and tradesmen domiciled in the Department of the Seine. There are five of them; the senior bears the title of judge, the four others that of the consuls.

Commercial and industrial cases are left to this court and thus the men most competent from their occupation are called upon to deal with such matters. Whilst its code dates from 1807, the court has really been in existence in a similar shape from the time of Charles IX.

Lord Mansfield's jury of merchants, selected by him and retained for years to try mercantile cases, was the nearest attempt of which we have ever heard of the English to have a court, anything like it.

Soft Drinks.

In spite of our friend's warning the subject of prohibitory laws is so much in the air—and in the Courts—it is hard to escape it. Of course—belonging to a rather old fashioned school and trained from youth upward in old fashioned principles of the right to "life, liberty and the pursuit of happiness," we have been, are now and ever expect to be, opposed to all sumptuary laws, call them by what name you may. And the more we see of prohibition laws and their enforcement, the more we are persuaded that they are wrong in principle and far more dangerous in the end than the evils they are intended to correct. And one of the most dangerous features of these laws today is the extent to which legislators go in the attempt to enforce them and to which the Courts are led in their decisions upon these laws. It is said that buttermilk has more than one per cent of alcohol in it—one per cent, we believe, being the limit our masters the Anti-Salooners have fixed as the danger limit. If so buttermilk must cease to be a beverage and if a late decision of the Supreme Court of Georgia, if followed, as no doubt it will be we see no reason why "iced tea" shall not cease to refresh the thirsty soul; for that Court has held in *Kunsberg* vs. *State,* 95 Southeastern Reporter, 12, that the state has the right to prohibit the manufacture and sale of "near-beer." The act in question makes penal the manufacture, sale, offering for sale, keeping for sale, etc., of prohibited liquors and beverages as defined in Section 1 of the act; among them being "all liquors and beverages or drinks made in imitation of or intended as a substitute for beer, ale, wine, or whisky, or other alcoholic or spirituous, vinous, or malt liquors, including those liquors and beverages commonly known and called near-beer." The court says:

> "On the basis of protecting health, morals, and the public safety, the provisions of the act making it illegal to manu-

> facture, sell, etc., intoxicating liquors have been held to be a valid exercise of the police power. The manufacture and sale of drinks made in imitation of or intended as a substitute for intoxicating drinks as specified in the act, although not intoxicating themselves, afford a cloak for clandestine manufacture, sale, etc., of intoxicants—the evil which the Legislature designed to prevent. Under such circumstances, the power to prohibit the manufacture, sale, etc., of the beverages will include the power also to prohibit the manufacture and sale of substitutes and imitations."

Now iced tea is a splendid imitation, as "it giveth color in the cup," of an old fashioned rye whiskey toddy, and we remember once how a fascinating and devilish widow brought tears to the eyes of one of the dearest old Virginia Colonels we ever knew. That Colonel—one of the handsomest, white haired, drooping-mustached, stateliest, old gentlemen, who without one single vice had run through three fortunes, was at a Sunday School picnic. Just before lunch the widow aforesaid, stole down behind a great oak near the little country church—which dated from 1809—and beckoned to the Colonel. Raising the immaculate silk hat he always wore, he responded to the beckoning finger, and as he drew nigh, the widow with a bewitching smile held out a large cut glass goblet in which the ice tinkled as it floated in a dark straw colored liquid, stuck full of fragrant mint. The Colonel bowed with that dignity and grace, which alas! has passed away with his day and generation, and with an expression on his ruddy old face to be seen —not described—received the goblet and held it to the light. "Ah! Madame," he said, "you know that age hath its privileges and so I drink to your eyes more intoxicating even than this glorious beverage," and then he sipped it—started almost as if he had been shot and a naughty word trembled on his lips. He reddened, drew himself up, and then his sense of humour came to the rescue.

"If you have poison for me I will drink it," he exclaimed, and King Lear had no more pathetic expression on his face as he uttered these words than did dear old Colonel P. as he drained the goblet to the bottom. It was *iced tea.* We walked slowly back to the Church. "At my age," he said—He was eighty two— "a julip would have aided very much in the talk

I am going to give on Palestine this afternoon. Oh, for an hour of Saint Timothy!"

Now, as Cap'n Cuttle would say, "The b'arrin' of that anecdote' lies in the application thereof." The Legislature can inhibit the making, using, or giving away of iced tea, buttermilk (which is not unlike in appearance a cream punch so we have heard) coca cola; which resembles claret and is, we believe often taken as a substitute for a stronger drink, and who can tell where the thing will stop? Well, who cares?

What the 14th Amendment Really Isn't.

We do not know which gives us most delight. Whether to find what the 14th Amendment is not, or the charming language in which Mr. Justice Holmes of the Supreme Court uses in telling us what it is not. In the case of the *Dominion Hotel* vs. *Arizona* decided in March, 1919, by the Supreme Court of the United States, he says that "The 14th Amendment is not a pedagogical requirement of the impracticable." Any one who doubts now what the 14th Amendment is not should be required to take a course of English in Harvard University for the term of his natural life. The learned justice uses this language in holding that the exemption of railway restaurants or eating houses located upon railway rights of way and operated by or under contracts with any railway company from the provisions of Arizona Penal Code, Sec. 717, that the eight hours daily work permitted to woman workers shall be performed within a period of twelve hours, is not such an arbitrary discrimination against hotels and other restaurants or eating houses as to render the statute invalid as denying the equal protection of the laws. The learned Justice says:

> "The equal protection of the laws does not mean that all occupations that are called by the same name must be treated in the same way. The power of the state "may be determined by degrees of evil, or exercised in cases where detriment is specially experienced." Armour & Co. *v.* North Dakota, 240 U. S. 510, 517, 60 L. ed. 771, 776, 36 Sup. Ct. Rep. 440, Ann. Cas. 1916D, 548. It may do what it can to prevent what is deemed an evil, and stop short of those

cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rule laid down were made mathematically exact. The only question is whether we can say on our judicial knowledge that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law. The deference due to the judgment of the legislature on the matter has been emphasized again and again. Hebe Co. *v.* Shaw, 248 U. S. 297, 303, ante, 146, 147, 39 Sup. Ct. Rep. 125. Of course, this is especially true when local conditions may affect the answer,—conditions that the legislation does, but that we cannot, know. Thomas Cusack Co. *v.* Chicago, 242 U. S. 526, 530, 531, 61 L. ed. 472, 475, 476, L. R. A. 1918A, 136, 37 Sup. Ct. Rep. 190, Ann. Cas. 1917C, 594.

Presumably, or at least possibly, the main custom of restaurants upon railroad rights of way comes from the passengers upon trains that stop to allow them to eat. The work must be adjusted to the hours of the trains. This fact makes a practical and, it may be, an important, distinction between such restaurants and others. If, in its theory, the distinction is justifiable, as, for all that we know, it is, the fact that some cases, including the plaintiff's, are very near to the line, makes it none the worse. That is the inevitable result of drawing a line where the distinctions are distinctions of degree; and the constant business of the law is to draw such lines. "Upholding the act as embodying a principle generally fair and doing as nearly equal justice as can be expected seems to import that if a particular case of hardship arises under it in its natural and ordinary application, that hardship must be borne as one of the imperfections of human things." Louisville & N. R. Co. *v.* Barber Asphalt Paving Co., 197 U. S. 430, 434, 49 L. ed. 819, 821, 25 Sup. Ct. Rep. 466. We can not pronounce the statute void."

The Telephone and the Law.

As was to be expected the telephone has given rise to some very nice questions. A Notary certified in due form that the privy acknowledgment of a married woman to a deed had been taken "before him." There was no defect whatever in the certificate, it being regular in every respect, but it turned out that the Notary had taken the

acknowledgment of the married woman over a telephone, and the court, in *Roach* vs. *Francisco Trustee, etc.,* 138 Tenn. 357, 197 S. W. 1099, held that the acknowledgment amounted to nothing, as the privy acknowledgment of a married woman could not be taken over a telephone. This had been previously held in another case—*Wester* vs. *Hurt,* 123 Tenn. 509, 130 S. W. 842. The court held that parol evidence was admissible to show that the officer taking the privy examination of a married woman for the acknowledgment of a deed, was not in her presence when he took the acknowledgment and therefore had no power to act, notwithstanding the fact that his certificate states privy acknowledgment in due form. There can be no question that such a proceeding is in direct violation of law, but in this State we doubt if there could be any remedy, as our Supreme Court has held in *Murrell* vs. *Diggs,* 84 Va. 900, and in several earlier cases that a Notary's certificate as to the acknowledgment of a deed and its subsequent recordation constitutes a judicial finding of the fact which cannot in a court of law be impeached by parol testimony in a collateral proceeding, nor even directly, except in a court of equity, upon the ground of fraud, or upon some other ground which reaches the conscience of the party. Now, it cannot be said that the act of the Notary in taking the acknowledgment over the telephone was a fraud. It was a gross irregularity, no doubt, and should never be done. The form of acknowledgment in this State requires the officer to certify that the acknowledgment was made "before me." Now a party at the end of a telephone line away from the official can by no manner of means be said to be "before me"—i. e., in the presence of the official. But if the official certifies that the "acknowledger was 'before him,'" who can gain say it? And as the certificate is a judicial act and cannot be impeached except for fraud, the Tennessee case is only referred to as an evidence of how differently the different courts of this Union construe similar laws. The Virginia rule is, in our opinion, the only safe one—else no title would be safe.